1. ILECs Currently Must Offer Four Basic Loop Types: Two Wire Analog, Four Wire Analog, Two Wire Digital, Four Wire Digital

Currently, there are four basic types of loops deployed in ILEC – and, for that matter, CLEC – networks. They are: two wire analog, four wire analog, two wire digital, and four wire digital loops. Effective local competition and timely advanced telecommunications infrastructure deployment depend on the ubiquitous availability of each of these loop types. Thus, e.spire submits that the Commission should adopt a rule establishing that all four types of loops must be made available on an unbundled basis.

Because ILECs currently pad their loop prices through the use of fancy labels such as ISDN and ADSL loops (typically, without providing the electronics that actually would make, for example, a four wire digital loop an "ADSL loop"), e.spire submits that the Commission should adopt a rule that requires ILECs to classify their loops as one of the four types listed above. With these classifications in place, the Commission then should adopt a uniform national framework for imposing unbundled loop recurring and nonrecurring charges. Consistent with current law, the rule should specify the manner – but not the amount – in which an ILEC can impose recurring and nonrecurring charges associated with its provisioning of each of the four loop types. e.spire firmly believes that such action significantly will diminish an ILEC's ability to inflate its competitor's costs of obtaining access to loops necessary to provision both traditional voice and advanced broadband services.

Specifically, e.spire submits that, for loops that are not equipped with electronics, ILECs should be permitted to impose *recurring* charges only on the basis of whether a loop is a two or four wire loop. For loops that require conditioning – digital two wire and digital four wire loops – ILECs should be allowed to impose a *nonrecurring* conditioning charge, if they impose a

similar charge on their own end users. In cases where a CLEC wins a customer away from an ILEC and elects to serve that customer with an unbundled loop that already has been conditioned for the ILEC's prior use, the ILEC should not be allowed to impose a nonrecurring charge on the CLEC, as it already will have had the opportunity to recover its conditioning costs from its own end user. For loops that are equipped with electronics, ILECs may adjust the applicable recurring loop charge consistent with individual state commission cost-based pricing rules.

2. ILEC Loop Electronics Must Be Unbundled as Part of an Electronically-Equipped Loop

As indicated in the preceding section, e.spire believes that ILECs must offer loops equipped with electronics (*e.g.*, ADSL-equipped loops) on an unbundled basis. Thus, e.spire submits that the Commission should clarify that ILECs must offer unbundled loops capable of supporting advanced digital electronics *and* loops equipped with such electronics, if they already have such equipment in place. This requirement not only is technically feasible, it is consistent with the Commission's existing loop definition which defines the loop without reference to specific equipment or technology deployed in delivering that functionality. Because that definition does not contemplate, and the Commission's rules do not otherwise permit, an ILEC's stripping-away of electronics so that it can diminish the functionality of unbundled loops it provides to its competitors, the Commission should prohibit ILECs from doing so, unless the competitor seeks access to the loop without electronics.

Although, if adopted, the Commission's ILEC advanced services affiliate proposal certainly will limit the availability of unbundled electronically-equipped loops, e.spire submits that, consistent with the broad goals of the 1996 Act, the Commission should provide competitors with every possible opportunity to compete. Indeed, if the Commission wisely were

to forego adopting its ILEC advanced services affiliate proposal, the availability of electronically-equipped loops, in addition to electronically-capable loops, could afford competitors with significant opportunities to broaden the reach of their advanced service offerings. In this environment, ILEC advanced services offerings also would be available for resale, thus providing competitors with all three methods of entry into the advanced services market and the field-leveling opportunity to share in an incumbent's economies of scale that are no less present with respect to the deployment of loop electronics than they are with respect to any other part of an ILEC network.

3. Extended Link Should Be Defined as a UNE

As indicated above in e.spire's separate discussions of the need for efficient collocation practices and the utility of evolving national rules, e.spire believes that the Commission should define Extended Link as a UNE. e.spire's use of the Extended Link in BellSouth territory and the New York PSC's experience working toward developing an Extended Link UNE demonstrate that it provides an important functionality – composed of loop, multiplexing and transport – that can maximize the number of customers that can be reached through a single collocation arrangement. Thus, in addition to alleviating space constraints in ILEC end offices, unbundled access to such functionality also will accelerate and expand competitors' roll-outs of both traditional voice and advanced services offerings.

In light of the Eighth Circuit's recent shared transport decision, in which it upheld the Commission's functional approach to defining UNEs, there is no doubt that the Commission has the requisite authority to define the functionality offered by an Extended Link arrangement as a single UNE. Notably, an Extended Link does not provide an end-to-end service, as it must be

combined with a CLEC's own switching equipment. Thus, adopting an Extended Link UNE cannot be challenged on the basis that it blurs the line between cost-based unbundling of network elements and avoided-cost resale of retail services.

To ensure that defining an Extended Link UNE will have its intended effect, e.spire submits that the Commission should preempt ILEC attempts to limit its usefulness by refusing to incorporate loops and transport capable of supporting advanced applications. For example, Extended Links that incorporate four wire digital loops and fiber transport will be most useful to CLEC's seeking to expand their broadband services offerings. Thus, consistent with the Commission's task under Section 706, this new national minimum unbundling rule should require ILECs to offer Extended Links for all loop and transport types. Moreover, because the functionality defined does vary on whether the loop component of the Extended Link UNE employs "home run" copper or a DLC configuration, ILEC attempts to limit access on the basis of that technology-based distinction – or any other – also should be prohibited.

4. Enforcement and Nondiscrimination

As with any other complaints regarding an ILEC's compliance with the Commission's unbundling rules, e.spire believes that the Commission has the requisite jurisdiction to hear and adjudicate such disputes. To maximize the effectiveness of its newly established "rocket docket," e.spire believes that the Commission preemptively should strike ILEC arguments that all such disputes must allege violations of state commission-approved interconnection agreements and, as a result, can only be heard by state commissions. Such arguments are baseless and already have wasted far to much of the Commission's and competitors' resources in

Commission mediated settlement negotiations that currently are taking place in anticipation of the October 5, 1998 start date for the Accelerated Docket.

Another issue that is raised at various points in the *NPRM* is whether an ILEC should be able to discriminate in favor of its own advanced services affiliate. For example, in paragraph 168, the Commission seeks comment on whether any loops provided by ILECs to an affiliate must also be provided to CLECs. Clearly, the answer to these questions must be that ILECs cannot offer their affiliates favorable treatment, in any way. To limit the potential damage that could be done by freeing ILECs to launch operations outside the scope of Section 251(c), before they have demonstrated compliance with that section, the Commission must establish and enforce an absolute prohibition on discrimination. In such a context, there simply can be no such thing as "reasonable" discrimination.

F. Unbundling Loops Passing through Remote Terminals (*NPRM*, ¶¶ 169–172)

e.spire commends the Commission for affirming that ILECs must provide unbundled access to "high-speed data-compatible loops whether or not a remote concentration device like a digital loop carrier is in place on the loop."[62] e.spire also supports the Commission's tentative conclusion that "providing an xDSL-compatible loop as an unbundled network element is presumed to be 'technically feasible' if the incumbent LEC is capable of providing xDSL-based services over that loop" and that "the incumbent LEC shall bear the burden of demonstrating that it is not technically feasible to provide requesting carriers with xDSL-compatible loops."[63] To avoid an exercise in nomenclature-based ILEC maneuvers to limit the effectiveness of this

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62 *Id.* ¶ 167.

63 *Id.*

conclusion, e.spire submits that the Commission should make clear this conclusion is not in any way limited by the use of the term "xDSL" – if an ILEC uses a conditioned digital loop for its own services, it must be technically feasible to provide access to that same loop on an unbundled basis.

In light of these conclusions, e.spire believes that the Commission correctly has recognized the need to address technical issues arising from provision of loops over remote concentration devices such as a digital loop carrier ("DLC"). In this regard, e.spire submits a "concrete solution" to address a particular technical issue raised concerning ILEC deployment of integrated digital loop carriers ("IDLCs"). Because IDLC-delivered loops bypass the distribution frame and terminate at the ILEC switch, they must be multiplexed before being handed-off to a CLEC. e.spire submits that ILECs can handle this task either by adding multiplexing before the switch or by using the switch itself to perform the multiplexing necessary to deliver the loop. Because the latter solution involves the use of ILEC "switching" equipment without the use of the switching functionality, the Commission should indicate that ILECs are not permitted to impose a charge for unbundled switching in this context. Once again, it is the functionality and not the specific technology or equipment that should guide the Commission's unbundling decisions.

Consistent with this rationale, e.spire supports the Commission's tentative conclusion that CLECs should not be comparatively disadvantaged by an ILEC's deployment of remote DLC systems.[64] Accordingly, e.spire agrees with the following tentative conclusions reached by the Commission:

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[64] *Id.* ¶ 172.

- If a technically feasible solution to provide xDSL-based service to a customer presently served by a DLC-delivered loop is bypass by additional copper infrastructure, an ILEC or its advanced services affiliate should not be able to avail itself of that option while denying or delaying that option to a CLEC.[65]

- If an ILEC or its advanced services affiliate provides xDSL-based services through the use of a DSLAM at the remote terminal, a CLEC must be able to avail itself of that option, either through the use of the ILEC's DSLAM or its own DSLAM collocated at the remote terminal.[66]

- ILECs must make available, in a nondiscriminatory manner, to CLECs the same methods that the incumbent or its advanced services affiliate uses to provide advanced telecommunications capability, including xDSL services.[67]

- An ILEC must provide a CLEC with the same loops it provides to itself or to its affiliate, regardless of whether the loop is "home run" copper or one that passes through a remote terminal.[68]

- Deployment intervals for provisioning xDSL-compatible loops should be the same for ILECs and CLECs regardless of whether the loop passes through a remote concentration device.[69]

There is no doubt that, by incorporating each of these conclusions into its rules, the Commission significantly will promote competitive access to loops capable of supporting advanced broadband services.

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65 *Id.*

66 *Id.*

67 *Id.*

68 *Id.*

69 *Id.*

G. Subloop Unbundling
(*NPRM*, ¶¶ 173–176)

e.spire submits that extension of the concept of loop unbundling to subloop elements is consistent with the pro-competitive goals of the 1996 Act and will promote the deployment of advanced telecommunications capability. Accordingly, e.spire supports the adoption of a rule that would require ILECs to offer subloop components (feeder plant, concentration device, distribution plant) as UNEs, and that would require ILECs to allow collocation at subloop points, such as controlled environmental vaults and above-ground cabinets. If the Commission adopts its ILEC advanced services affiliate proposal, e.spire agrees with the Commission's conclusion that it would be an unreasonable practice for an ILEC to deny CLECs collocation while allowing its affiliate to collocate at the remote terminal. If, in specific circumstances, subloop unbundling is not technically feasible or there is insufficient space at the remote terminal, e.spire believes that ILECs should be obligated to provide an alternative unbundling method at no greater cost to the CLEC. In such circumstances ILECs should be required to demonstrate that the alternative unbundling method will provide the CLEC with loop of the same quality and functionality as the loop that the CLEC would have assembled through access to sub-loop elements.

H. Additional Unbundling Considerations
(*NPRM*, ¶¶ 180–183)

To promote competition in general and the proliferation of competitive advanced service offerings in particular, e.spire urges the Commission to refrain from establishing any rules that would limit access to UNEs used for provisioning advanced services. Indeed, it seems unlikely that any of these UNEs could be characterized as being "proprietary" as defined in Section

251(d)(2), as all or nearly all equipment deployed in ILEC networks is purchased "off-the-shelf" from equipment manufacturers. Additionally, it also seems unlikely that there are any "advanced" network elements that are incapable of being unbundled. Indeed, unbundled access to elements such as individual packet switches is both technically feasible and necessary for CLECs, such as e.spire, to develop networks of interconnected packet switched networks.

V. ADVANCED ACCESS SERVICES OFFERED TO END USERS SHOULD BE SUBJECT TO THE RESALE REQUIREMENT OF SECTION 251(C)(4)

(*NPRM*, ¶¶ 185–189)

e.spire agrees with the Commission's tentative conclusion that advanced services offered by ILECs to residential or business customers or to Internet service providers should be subject to the resale requirements of Section 251(c)(4). Indeed, the plain language of that section makes no other conclusion possible. Section 254(c)(4) explicitly imposes on ILECs the obligation to offer for resale "any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."[70] e.spire concurs in the Commission's analysis that advanced services generally offered by ILECs to subscribers who are not telecommunications carriers generally meet this test. Thus, e.spire also agrees with the Commission's tentative conclusion that such advanced services "are fundamentally different from the exchange access services that the Commission referenced in the *Local Competition Order* and concluded were not subject to section 254(c)(4)."[71]

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70 47 U.S.C. §251(c)(4).

71 *MO&O/NPRM*, ¶ 188.

VI. RBOC INTERLATA RELIEF IS NEITHER NECESSARY NOR APPROPRIATE AT THIS TIME
(*NPRM*, ¶¶ 190–196)

In light of its Section 706 duty to encourage the deployment of advanced telecommunications services, the Commission has requested comment regarding its authority to grant "targeted" interLATA relief by either modifying LATA boundaries pursuant to Section 3(25)(B).[72] e.spire submits that, while this provision grants the Commission limited authority over LATA boundaries, this authority is to be construed narrowly and cannot be exercised in a way that compromises the incentive structure for RBOC compliance with Section 251(c) that Congress built into Section 271 of the Act.

Initially, e.spire notes that Section 3(25)(B) provides the Commission with limited, authority to *modify* LATA boundaries. Recognizing the limited nature of this grant and the fundamental importance of existing LATA boundaries, the Commission has modified LATA boundaries pursuant to Section 3(25)(B) only in cases where the requested modification: (1) has been approved by the relevant state commission; (2) proposes only traditional POTS service; (3) demonstrates that the state commission found a sufficient community of interest to warrant the boundary waiver; (4) documents through surveys and other means that a "community of interest" exists; and (5) involves only a limited number of customers or access lines.[73]

In the context of advanced services, e.spire notes that the Commission already has permitted one very limited exception to this test by permitting Southwestern Bell Telephone

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72 *Id.* ¶¶ 190-196.

73 *Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, Memorandum Opinion and Order, CC Docket No 96-159, FCC 97-244, ¶ 24 (rel. July 15, 1997).

("SWBT") to provide ISDN service across a single LATA boundary in Texas.[74] Notably, the Commission's decision to grant limited LATA relief (and allow the use of equipment located in adjacent LATA to provide ISDN service), in this instance, relied heavily on three factors: (1) the Texas PUC had ordered SWBT to make available ISDN service to all customers in Texas; (2) SWBT estimated that only 20 or so customers in the entire Hearne, Texas LATA would purchase ISDN; and (3) SWBT's costs for upgrading equipment in the Hearne LATA would be in excess of $2 million.

Although it is unclear how the results of this decision comport with the Commission's Section 706 task of encouraging the deployment of advanced telecommunications *capability,* or whether alternative service offerings were available from other carriers, e.spire submits that the Commission's fact-specific, case-by-case approach to LATA modification requests is appropriate, as the grant of general modifications would exceed the Commission's authority under the Act. Indeed, the Supreme Court has noted that the Commission's authority to "modify" portions of the Communications Act allows the Commission to adopt a "moderate change" and not "basic and fundamental changes in the scheme created by [the statute]."[75]

In this regard, e.spire notes that the express limitation on the Commission's Section 10 forbearance power, which states that the Commission "may not forbear from applying the requirements of section 251(c) or section 271 ... until such sections have been fully implemented" should underscore the importance Congress placed on those pro-competitive

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74 *Southwestern Bell Telephone Company Petition for Limited Modification of LATA Boundaries to Provide Integrated Services Digital Network (ISDN) at Hearne, Texas,* Memorandum and Opinion Order, File No. NSD-LM-97-26 (rel. May 18, 1998).

75 *MCI Telecommunications Corp. v. AT&T*, 512 U.S. 218, 225 (1994).

provisions and the degree to which the Commission's ability to "modify" them is limited.[76] Mindful of this limitation, the Commission, in the *706 Order*, denied several RBOCs' "requests for large-scale changes in LATA boundaries" based on the reasoning that grant of those requests "would be functionally the same as forbearing" from Section 271, which it is not permitted to do in the absence of RBOC compliance with that section. e.spire agrees with the Commission's conclusion, but also submits that it is not only "large-scale" changes that exceed the Commission's authority to *modify* LATA boundaries – grant of any generally applicable changes to or piercing of LATA boundaries would exceed that authority as well.

Accordingly, e.spire submits that the Commission may not grant relief similar to that granted by Congress for "incidental interLATA services" defined in Section 271(g). Congress already carefully has carved-out these exceptions to the RBOC interLATA services restriction. Section 10(d) forbids the Commission from adding to them. This conclusion is further underscored by the language of Section 271(h) which provides that "the provisions of subsection (g) are intended to be narrowly construed . . . .The Commission shall ensure that the provision of services authorized under subsection (g) by a Bell operating company or its affiliate will not adversely affect . . . *competition* in any telecommunications market."[77]

Finally, e.spire notes that, even to the extent the Commission has authority to modify LATA boundaries, there simply is no evidence any interLATA relief is necessary to further the goals of Section 706 at this time. The trade press is rife with news of RBOC investments in and roll-outs of xDSL services – none of which are contingent on LATA boundaries. Indeed ILECs and their competitors appear to be responding to consumer demands for advanced services. As

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[76] 47 U.S.C. § 160(d).

[77] *Id.* § 271(h).

has been demonstrated in the Commission's docket concerning Bell Atlantic's "Emergency Petition" concerning the deployment of advanced telecommunications capability in West Virginia, the market is responding to these demands, even in rural areas.[78]

In sum, the challenge for the Commission is to determine whether an actual, acute shortage exists in a given geographic area or whether any perceived bandwidth shortfall is merely amounts to an "occasional, transient lack of supply."[79] Moreover, it should not be overlooked that the RBOCs control their own destiny and, by demonstrating compliance with Section 271, *all* LATA restrictions can be removed. Premature relief in the form of numerous and general LATA modifications fundamentally would disrupt the regulatory balance of the 1996 Act – and, in so doing would withhold from consumers the benefits of effective competition in the markets for all telecommunications services.

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78 *In the Matter of Emergency Petition of Bell Atlantic-West Virginia for Authorization to End West Virginia's Bandwidth Crisis,* CC Docket No. 98-11 (filed July 22, 1998); *see Ex Parte* Letter from Frank S. Simone to Magalie Roman Salas, CC Docket No. 98-11, at 2-3 (filed Aug. 31, 1998); Comments of Helcion Corporation, CC Docket No. 98-11, at 5 (filed Aug. 10, 1998); Comments of Allegheny Communications Connect, Inc., CC Docket No. 98-11, at 2 (filed Aug. 10, 1998).

79 *NOI*, ¶ 33.

CONCLUSION

e.spire appreciates the Commission's efforts in producing both the *706 NOI* and the *706 Order and NPRM* and the opportunity to participate in this proceeding. In conclusion, e.spire urges the Commission to adopt rules and policies consistent with the foregoing discussion regarding the Commission's tentative conclusions and requests for additional proposals to promote local competition and ensure the timely deployment of advanced telecommunications services.

Respectfully submitted,

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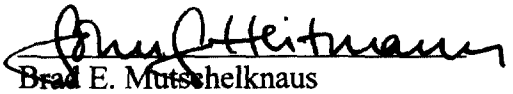
By: 
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September 25, 1998